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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 657

W. T. ODELL, R. R. IVEY, J. A. RUSSELL, CLEMMIE TAYLOR AND R. M. DENNIS, *Petitioners*,

v.

HUMBLE OIL & REFINING COMPANY, *Respondent*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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BRIEF FOR RESPONDENT IN OPPOSITION

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Opinion Below

The opinion of the Court of Appeals (R. 20-27) is reported at 201 Fed. 2d 123.

Questions Presented

1. Does the discharge of an employee constitute a criminal offense under Title 18 U.S.C.A., Section 1503?

2. Does Title 18, U.S.C.A., Section 1503 create civil liability?

3. Does a contract carry any greater liability for its breach than damages for the period of notice specified in its termination clause?

Argument

First Counterpoint
(In Reply to Points 2 and 3 in Petitioners' Brief)

The discharge of an employee, even if wrongful and malicious, could not constitute a violation of Title 18 U. S. C. A., Section 1503.

Throughout their petition and brief petitioners assume their major premise, viz: that the discharge complained of was a violation of Title 18, U.S.C.A., Section 1503. Although it is apparent that the decision below was correct if no violation of this statute is plead, petitioners cite no authority and advance no sound argument to support their naked statement that a wrongful discharge violates the statute.

Unless the statutory language "*injures* any * * * witness in his * * * property" is broad enough to cover the wrongful discharge of an employee, it is plain that Section 1503 was not violated by the alleged discharge of petitioners.

The Court of Appeals held that a mere discharge, regardless of motive, was not a tort and could not constitute an "injury" within the meaning of the statute (R. 26-27). Respondent submits that this holding is correct and disposes of the entire controversy.

If we assume that Section 1503 creates civil liability, it must be conceded that such liability could arise only in the case of an injury resulting from some act declared by the statute to be unlawful. Even if harm were done to the property of a witness, no cause of action could exist unless

that harm resulted from an act which violated Section 1503. This is the established rule in treble damage suits brought under the section of the Sherman Act (15 U.S.C.A., Sec. 15) which expressly creates civil liability for injury to business or property resulting from a violation of the Act. ALEXANDER MILBURN CO. v. UNION CARBIDE & CARBON CORP. (4th Cir.), 15 Fed. 2d 678, 683; JACK v. ARMOUR & CO. (8th Cir.), 291 Fed. 741, 745.

The word "injury" has a well understood meaning. In construing statutes which contain the word "injure" or "injury" the courts of this country have held uniformly that the word "injury" means: "Damage resulting from an unlawful act—not a lawful one." STATE v. MOORE, 39 A. 584, 585, 69 N.H. 99; BOHN MFG. CO. v. HOLLIS, 55 N.W. 1119, 1121, 54 Minn. 223, 21 L.R.A. 337, 40 Am. St. Rep. 319; STATE v. VAN PELT, 49 S.E. 177, 185, 136 N.C. 633, 68 L.R.A. 760; REYNOLDS v. PLUMBERS' MATERIAL PROTECTIVE ASS'N, 63 N.Y.S. 303, 309; O'MALLEY v. STATESMAN PRINTING CO. (Idaho), 91 P. 2d 357, 359.

It is well established also that the word "injury" is applicable only to such a legal wrong as would give rise to a cause of action for damages at common law. WOODRUFF v. NORTH BLOOMFIELD GRAVEL MINING CO., 18 F. 753, 781; PARKER v. GRISWALD, 17 Conn. 287, 298, 42 Am. Dec. 739, 746. In PENN. R. CO. v. MARCHANT, 119 Pa. St. 541, 561, 13 A. 690, it is said:

> "We understand the word 'injury' or 'injured', as used in the constitution, to mean such a legal wrong as would be the subject of an action for damages at common law."

There can be no "injury" without a violation of an existing legal right. KEOGH v. CHICAGO & N. W. R. CO., 260 U.S. 156, 163; MALTZ v. SAX (7 Cir.), 134 F. 2d 2, 4;

LUELLEN v. CITY OF ABERDEEN, 148 P. 2d 849, 855, 20 Wash. 2d 594; CASON v. BASKIN, 20 So. 2d 243, 250, 155 Fla. 198, 168 A.L.R. 430.

The error in petitioners' theory is fundamental. The discharge of an employee is at most a breach of contract and cannot constitute a tort or "injury", regardless of malice or motive. The only act which respondent is alleged to have committed is the discharge of petitioners. This act, a simple breach of contract at most, cannot be converted into a tort by alleging that it was done maliciously and for revenge.

There have been many cases where discharged employees have sought unsuccessfully to maintain tort actions. The fallacies in petitioners' theory are discussed at length in ELMORE v. ATLANTIC COAST LINE R. Co., 191 N.C. 182, 131 S.E. 633, 635, 636, 637. Also directly in point are MITCHELL v. STANOLIND PIPE LINE COMPANY, 184 F. 2d 837, 838; GENUINE PANAMA HAT WORKS v. WEBB (D.C. N.Y.), 36 F. 2d 265, 266; COMERFORD v. WEST END STREET RY. Co., 164 Mass. 13, 41 N.E. 59, 60.

There is no conflict between the decision in the present case and BOMAR v. KEYES, 162 F. 2d 136, which was an action against a *third person*—not a suit against the employer. Decisions to the effect that an employee has a cause of action against a *third person* who has interfered with his employment have no bearing upon the rights and liabilities existing between employer and employee. It is settled that rights and liabilities, as between employer and employee, are covered entirely by the contract of employment.

Finally, it must be remembered that Section 1503 is a criminal statute and that no civil liability to petitioners could arise under that statute unless respondent is also criminally liable. It is universally recognized that penal statutes must be strictly construed and that the courts will not

extend a penal statute by construction to apply to an act which is not expressly condemned by the clear language of the statute. U. S. v. ALPERS, 338 U.S. 680, 681. Certainly Section 1503 cannot be stretched to make a crime of a simple breach of contract. Moreover, petitioners in their contention run afoul of the settled principle that a mere breach of contract is not a crime and cannot give rise to any criminal liability. One of the essential attributes of liberty of contract is the constitutional right to terminate contracts, subject only to civil liability for unwarranted termination. 11 AM. JURIS., CONSTITUTIONAL LAW, Section 346.

Second Counterpoint

(In Reply to Points 1 and 2 of Petitioners' Brief)

Title 18 U.S.C.A., Section 1503, creates no civil liability.

Under their points 1 and 2, petitioners contend that Section 1503 creates civil liability. The statute does not purport to do so; on the contrary, it is purely a criminal statute. Petitioners argue that this statute should be "construed" as creating civil liability. Their argument advances the following theories: (1) One of the purposes for which Section 1503 was enacted was the protection of witnesses, (2) witnesses are, therefore, a class for whose special benefit the statute was designed, so (3) any witness whose property rights are damaged has a cause of action against the offending party.

The statutory language to which petitioners seek to apply this theory reads as follows:

> "Whoever corruptly or by threat or force * * * endeavors to influence, intimidate, or impede any witness, in any court of the United States * * * or injures any party or witness in his person or property on account

> of his attending or having attended such court * * * or on account of his testifying or having testified to any matter pending therein * * * or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than $5,000.00, or imprisoned not more than 5 years, or both."

As pointed out by the court below (R. 25) there is no authority to support petitioners' contention. On the contrary, as demonstrated by the opinion of the court below, the "construction" contended for by petitioners is opposed to well settled principles of law. In the first place, the statute is a criminal law and must, therefore, be strictly construed. UNITED STATES v. ALPERS, 338 U.S. 680, 681. In the second place, the rule is that a statute which does not purport to create civil liability, but merely makes provision to secure the safety or welfare of the public as an entity, is not subject to a construction establishing civil liability. BEEGLE v. THOMSON, 138 F. 2d 875, 880. (Cert. Den. 322 U.S. 743); 50 AM. JURIS., STATUTES, Sec. 586.

It is perfectly clear from the language of Section 1503 that the purpose of the statute is to protect the administration of justice. Unquestionably, the statute was designed to protect witnesses in the sense that all criminal laws are designed to protect the public. BROADBENT v. UNITED STATES, 149 F. 2d 580, 581, and the other decisions cited on page 10 of petitioners' brief, go no further than this.

The statute prohibits injury to *witnesses*, including all persons who have been witnesses in the past or may be witnesses in the future. This "class" embraces every man, woman and child in the United States. "Witnesses" is as broad a category as "people", so the statute must be said to protect the public as an entity and not to be for the benefit of petitioners as individuals.

Nor is there any support for petitioners contention in the decisions cited on page 13 of their brief. Those decisions construe as creating civil liability certain other penal laws, such as the National Safety Appliance Act, the Securities Exchange Act and the Fair Labor Standards Act, which contain exclusive and detailed codes regulating particular fields of business activities for the purpose of protecting certain individuals from conditions found by Congress to exist in those businesses. As stated by the court below: "All of these acts were passed for the special benefit of the group covered thereby." (R. 24). There is no analogy between those statutes and the statute here involved.

Furthermore, in construing any statute, the courts always must consider the needs which the statute was intended to meet and the benefits which it was intended to produce. HAYS v. MICHIGAN CENTRAL RR. Co., 111 U.S. 228.

Was there any need for Congress to provide civil liability for malicious injury to the property of witnesses? Is it true, as petitioners assert, that witnesses in Federal courts are doomed to suffer great wrongs without remedy unless this court is willing to extend Section 1503 to create civil liability? Certainly not, because the common law of the various states always has provided a remedy for malicious injury to the property of all persons, whether witnesses or not. Indeed, there is no question that petitioners would have a remedy under the New Mexico law if they have any cause of action either in tort or breach of contract. Petitioners are seeking to avoid well settled rules of law with respect to the measure of damages. What they allege is at most a contract claim. They hope to twist it into a tort claim by inducing this court to place a strained construction upon a purely penal statute, and thereby to swell their damages to fantastic proportions in the form of punitive damages.

There having always been a remedy for malicious injury to person or property under the state law, a federal statute creating an additional remedy would have been a useless thing. The only need that existed was for the added sanction of criminal responsibility, which of course could *only* have been created by federal statute; the intent to provide such responsibility is the only intent which can reasonably be ascribed to Congress.

Third Counterpoint

(In Reply to Point 4 in Petitioners' Brief)

The Court of Appeals correctly held that the complaint negatived the existence of Federal jurisdiction.

Having held that the complaint failed to state a *tort* claim upon which relief could be granted, the Court of Appeals considered whether a claim for *breach of contract* was stated. The only contract alleged in the complaint is the contract between the labor union and respondent and it contains a thirty day cancellation clause (R. 11). The Court of Appeals said:

> "The contract with the employees' bargaining representative provided that it could be terminated by either party by giving thirty days notice in writing. Where a contract of employment expressly empowers an employer to terminate the contract upon giving notice, recovery for wrongful breach is limited to the notice period. The complaint alleged that each appellant was receiving a salary which together with other valuable incidents to his job was of the value of $500 per month. Under the provisions of the contract, one month's salary was the maximum amount recoverable for breach of the contract.
>
> "Whenever it clearly appears from the complaint as a whole that the maximum possible recovery is less than

> the minimum jurisdictional amount necessary to confer federal jurisdiction of the subject matter, a bare allegation that there is in controversy more than $3,000 exclusive of interests and costs is insufficient to state a cause of action of which a federal court has jurisdiction."

Respondent submits that this holding unquestionably is correct. Viewed as a suit for breach of contract, this suit could yield each petitioner a maximum recovery of only $500.00 because that sum is alleged to be the value of the job of each petitioner for thirty days, the notice period (R. 7). It is the universal rule that recovery is limited to the notice period where the contract expressly provides that the employer may terminate the service at any time by giving notice. 35 AMERICAN JURIS., MASTER AND SERVANT, Section 54. This rule is applicable where the contract relied upon is one between an employer and a labor union. 31 AMERICAN JURIS., LABOR, Section 125.

There is no conflict between the holding in the present case and YAZOO & M.V.R. Co. v. WEBB (5 Cir.), 64 F. 2d 902, 903, as argued by petitioners. That case is totally unlike the present case and is no authority for petitioners' proposition. It was not a suit for discharge at all but for back wages. There the employer had not terminated the contract as to the plaintiff, but, on the contrary, admittedly had operated under it during all the years in question. The contention of the defendant was that the first underpayment had occurred beyond the bar of the statute of limitations, that the breach of the contract was then complete and that therefore the whole cause of action was barred. The effect of the holding was that, since each periodic underpayment gave the plaintiff a cause of action (the contract remaining in effect between the parties), the whole claim was not barred. Furthermore, the language on this

subject must be considered *dictum*, since the case was decided on the independent ground of estoppel.

When the fundamental principles involved are considered, it becomes clear that if petitioners have any rights under the union contract they are necessarily subject to the 30-day notice period. If petitioners base their claim under the contract upon the theory that the union was their agent, then they are, in legal contemplation, parties to the contract and obviously are bound by all its terms. This was the holding in BRITT v. TRAILMOBILE CO. (6 Cir.), 179 F. 2d 569, 572 (cert. denied, 340 U.S. 820).

On the other hand, if they pursue the theory that they were not parties to the contract but were third party beneficiaries of it, their position is no better. MACKAY v. LOEW'S INC. (9 Cir.), 182 F. 2d 170, 172; MINOR v. WASHINGTON TERMINAL CO., 180 F. 2d 10, 11. If petitioners urge that the terms of the union contract are to be incorporated into their individual contracts of employment upon the third party beneficiary theory, then they must incorporate all of such terms, not only such parts as they consider beneficial to themselves. COMMISSIONER v. KELLER, 59 F. 2d 499, 502; IN RE CONNECTICUT CO., 95 F. 2d 311, 315.

Petitioners argue that by failing to cancel the union contract at the time it discharged petitioners, respondent became saddled with a liability in damages equal to the expected earnings of petitioners during the rest of their lives. This in spite of the fact that the contract can be cancelled at any time upon 30 days' notice! By some legerdemain, unexplained and unsupported by authority, petitioners claim the absolute right to jobs for life under a contract which has no assured existence beyond 30 days. If petitioners' claim is sustained, then petitioners are in far better position than their former fellows, still employed by respondent, who are assured of 30 days' tenure at most.

Evidently petitioners claim that their discharge removed from the contract the 30-day cancellation clause, in so far as petitioners are concerned, but left all other provisions intact.

Conclusion

The case was decided upon fundamental and well settled legal principles, and no conflict is involved. It is, therefore, respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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